

Commissioner Rachelle Chong

May 23, 1994


Page Two

June 2. Accordingly, if at all possible, we would like to set up a meeting for this week to discuss this critical issue. Please have someone from your staff call me at (305) 530-1322.

I greatly appreciate your expedited consideration of this matter and I apologize for inconveniencing you on your first day on the job.

Best wishes.

Sincerely yours,



Matthew L. Leibowitz

MLL/mdr

## LEIBOWITZ &amp; ASSOCIATES, P.A.

MATTHEW L. LEIBOWITZ  
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ILA L. FELO  
KARSTEN AMLIE  
OF COUNSEL  
AARON P. SHAINIS  
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SANFORD L. SCHREY

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1855 23RD STREET, N.W.  
WASHINGTON, D.C. 20037

May 23, 1994

Via Hand Delivery

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: PCS Minority Participation

Dear Commissioner Ness:

Congratulations on your first day in office.

I represent Jorge Mas and his company, MasTec, Inc., in the matter of Personal Communications Services (PCS). As you may be aware, and as reported by the Wall Street Journal today, there is great concern regarding how the FCC will implement the Congressional mandate included in subsection 4 (D) of Section 309 (j) to ensure that women and minority owned firms, small business, and rural telephone companies are given an equal opportunity to participate in the PCS bidding process. Specifically, although the FCC initially considered frequency set-asides for the designated entities, it now appears that the FCC staff is concerned regarding the constitutionality of such an approach.

It is our belief that frequency set-asides, installment payments, tax certificates, as well as bidding credits, are legally appropriate and economically necessary in order to ensure participation by the designated entities in this new technology. Anything short of all of these devices, particularly set-asides, would fail to properly and fully implement the provisions of Section 309 (j)(4)(D) of the Communications Act.

I would respectfully request a meeting, as soon as possible, to bring several minority representatives to your Office to discuss these matters. It is our understanding that the Chairman intends to bring this matter up at the June 9th meeting, thus time is of the essence, especially given the sunshining of the matter once the Agenda is published, which I understand will be on

Commissioner Susan Ness

May 23, 1994

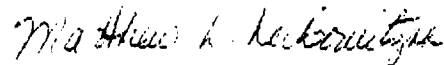
Page Two

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I greatly appreciate your expedited consideration of this matter and I apologize for inconveniencing you on your first day on the job.

Best wishes.

Sincerely yours,



Matthew L. Leibowitz

MLL/mdr

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

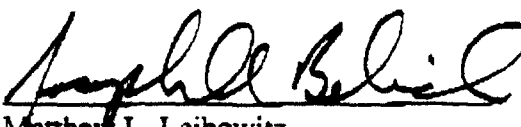
In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act	)	
Competitive Bidding Treatment of	)	
Designated Entities	)	

To: The Secretary

**EX PARTE PRESENTATION**

MasTec, Inc. submits an original plus one copy of this memo and attached letter (hand-delivered ex-parte to Commissioners Andrew C. Barrett, James Quello, Rachelle Chong, and Susan Ness) for inclusion in the record of the above-referenced rule making proceeding.

Respectfully submitted,

*for*   
Matthew L. Leibowitz  
Counsel for MasTec, Inc.

May 31, 1994

Leibowitz and Associates  
One S.E. Third Avenue  
Suite 1450  
Miami, FL 33131  
(305) 530-1322

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

May 20, 1994

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W. Room 814  
Washington, D.C. 20554

Dear Chairman Hundt:

We are concerned with recent indications that the Federal Communications Commission (FCC) may not be fully implementing Section 309(j) of the Communications Act passed by Congress in August 1993, granting the Commission authority to conduct auctions for licensing radio spectrum for the emerging Personal Communications Services (PCS) industry.

Congress specifically designed subsection 4(D) of Section 309(j) to ensure that women and minority owned firms, small businesses, and rural telephone companies are given an equal opportunity to participate in the PCS bidding process. As you know, PCS will create a massive new telecommunications market representing an historic opportunity to expand the ownership and control of our telecommunications industry to include all citizens.

Given the estimated costs of establishing a PCS network and purchasing licenses, it is our belief that the Commission must implement four essential mechanisms so minority and women owned firms (having at least 50.1 percent equity ownership and 50.1 percent controlling interest) and small businesses, including rural telephone companies, have access to the necessary capital to compete in the PCS market. These mechanisms are: frequency set-asides; installment payments; tax certificates; and bidding credits. Anything short of these devices, particularly set-asides, would fail to properly and fully implement the provisions of Section 309(j)(4)(D) of the Communications Act and would have the likely effect of barring minority, women, and small business entry into the PCS market.

While the March 8, 1994 FCC regulations on competitive bidding for narrowband radio spectrum included some provisions for women, small businesses, and minority participation, the Commission did not treat these entities in a balanced manner, and failed to address rural telephone companies specifically. By failing to categorically and uniformly adopt spectrum set-asides on an MTA basis, tax

The Honorable Reed Hundt  
May 20, 1994  
Page two

certificates, installment payments and bidding credits, the Commission falls short of complying with its congressional mandate to ensure fair opportunities for small business, including rural telephone companies, minorities and women in this new form of communication.

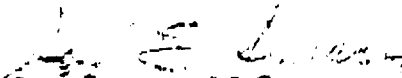
Compliance with Congressional intent is critical to ensure that the designated entities have access to participate in this emerging industry. We trust that you will look into this matter and address our concerns before the promulgation of auction rules for broadband PCS. We would also welcome your assurance that the Commission will pursue a strategy to suitably improve the problems we have raised.


Thank you for your attention to this matter. We look forward to your response.

Sincerely,

  
Bill Richardson, M.C.

  
Patricia Schroeder, M.C.


  
Jose Serrano, M.C.

  
Major Owens, M.C.

  
Melvin Warr, M.C.

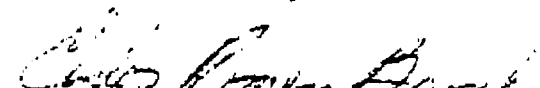
  
Jesse Roj-Lehtinen, M.C.

  
Eddie Bernice Johnson, M.C.

  
Robert Torricelli, M.C.

  
Lincoln Diaz-Balart, M.C.

  
Nancy Johnson, M.C.

  
Carlos Romero-Barcelo, M.C.

  
Frank McCloskey, M.C.

  
Robert Menendez, M.C.

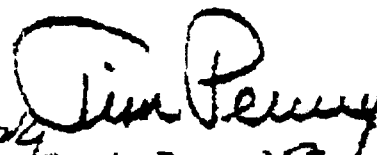
  
Peter Deutsch, M.C.

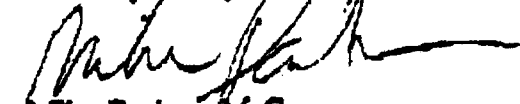
The Honorable Reed Hundt  
May 20, 1994  
Page three

  
Marjorie Margolies-Marvinsky, M.C.

  
Bernard Sanders, M.C.

  
Robert C. Scott, M.C.

  
Timothy Penny, M.C.

  
Mike Parker, M.C.

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CHURCH &amp; TOWER

TC

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30 District of Columbia  
 Washington  
 2245 Rayburn House Office Building  
 Washington, DC 20515  
 (202) 225-6130  
 Whip Office  
 1415 H St. Capitol  
 Washington, DC 20518

BILL RICHARDSON  
 CHIEF DEPUTY MAJORITY WHIP



CHAIRMAN SUBCOMMITTEE ON  
 NATIVE AMERICAN AFFAIRS  
 COMMITTEES  
 ENERGY AND COMMERCE  
 NATIONAL ACADEMIES  
 SELECT COMMITTEE ON INTELLIGENCE  
 HOUSE COMMITTEE  
 ON HUMAN RIGHTS

**Congress of the United States**  
**House of Representatives**  
 Washington, DC 20515-7103

May 27, 1994

The Honorable Reed Hundt  
 Chairman  
 Federal Communications Commission  
 1919 M Street, N.W. Room 814  
 Washington, D.C. 20554

Dear Chairman Hundt:

I am enclosing the signatures of 44 additional members of Congress who would like to add their names to the letter regarding Personal Communications Services auction rules for the designated entities which I, along with 18 members, sent to you on May 20. A copy of the original letter is also attached.

I apologize for the hasty presentation of the additional signatures, but I believe that Congressional support for the strategy outlined in the attached letter is clear. Please contact me if I can provide you further information.

With warm regards,

Bill Richardson  
 Chief Deputy Majority Whip

BR/mm

Santa Fe  
 211 Paseo de Peralta  
 Santa Fe, NM 87501  
 (505) 889-7130

San Jose  
 2nd and Alameda Streets  
 San Jose, CA 95113  
 (415) 752-4322

Las Vegas  
 300 N. High Street  
 Las Vegas, NV 89101  
 (702) 426-7170

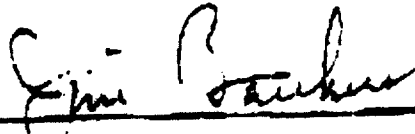
Albuquerque  
 601 N. 1st St.  
 Albuquerque, NM 87102  
 (505) 766-6000



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TO

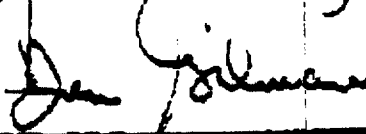
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Jim Buschus, M.C.



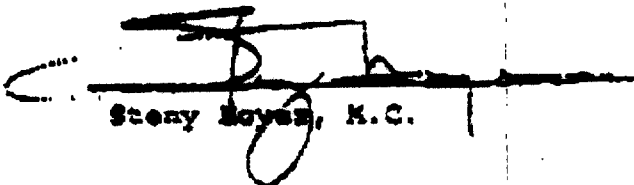
Gerald Kleczka, M.C.



Ben Gilman, M.C.



Ed Pastor, M.C.



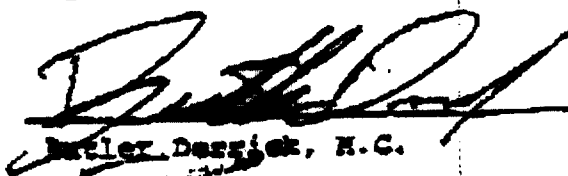
Stony Boyer, M.C.



Bart Stupak, M.C.



Karen Thurman, M.C.



Butler Darrick, M.C.



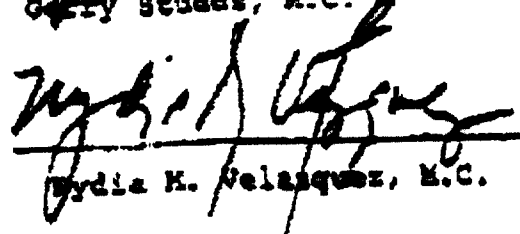
Bob Carr, M.C.



Xavier Becerra, M.C.




Gerry Studds, M.C.




Lydia H. Velasquez, M.C.



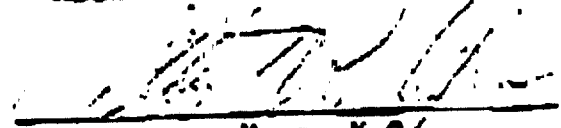
Lucille Royball-Allard, M.C.



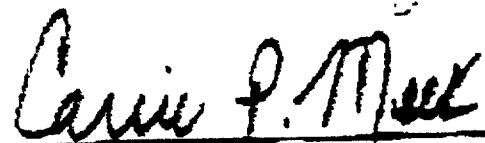
Luis V. Gonzalez, M.C.



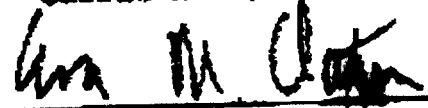
Michael Bilirakis, M.C.



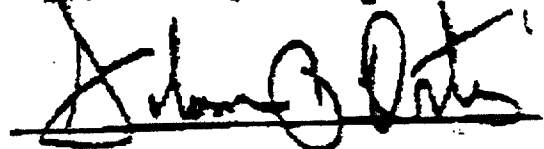
Albert R. Wynn, M.C.



Carrie Meek, M.C.



Eva M. Clayton, M.C.



Solomon P. Ortiz

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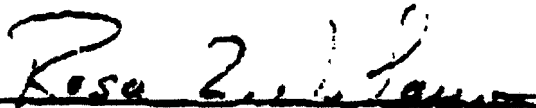
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Nancy Pelosi, M.C.



Nita Lowey, M.C.



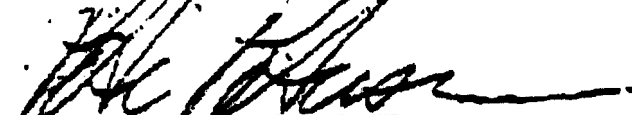
Rosa Delauro, M.C.



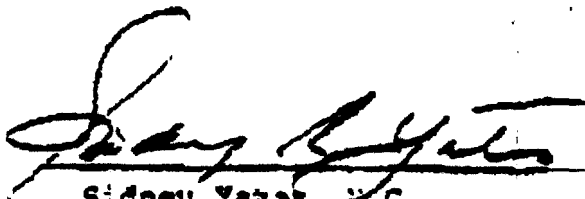
Corrina Brown, M.C.



Esteban Torres, M.C.



Pete Peterson, M.C.



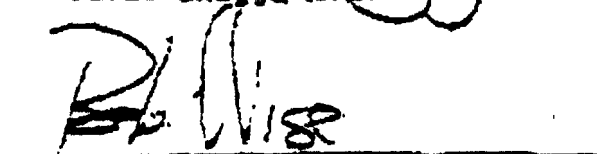
Sidney Yates, M.C.



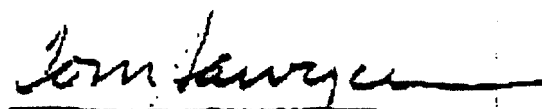
David Skaggs, M.C.



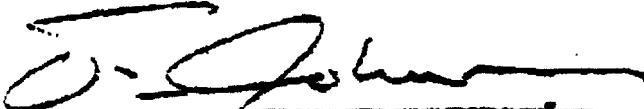
Bill Hefner, M.C.



Bob Wise, M.C.



Tom Sawyer, M.C.



Tim Johnson, M.C.



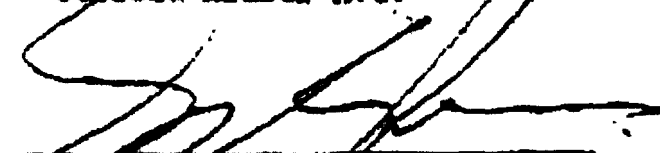
Michael Kaputski, M.C.



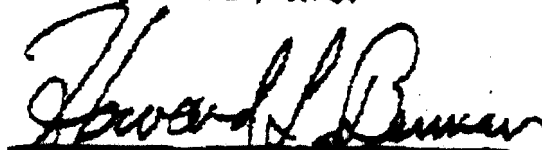
Jacobd Nadler, M.C.



Barney Frank, M.C.



Sam Giddenson, M.C.



Howard Berman, M.C.



Bruce Vento, M.C.



Thomas Manton, M.C.




Charlie Rose, M.C.

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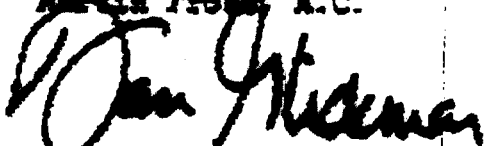
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Jim Cooper, M.C.

  
Gary Condit, M.C.

  
Martin Frost, M.C.

  
Richard Durbin, M.C.

  
Dan Glickman, M.C.

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## LEIBOWITZ &amp; ASSOCIATES, P.A.

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235 23RD STREET, N.W.  
WASHINGTON, D.C. 20037

June 2, 1994

Via Facsimile

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: Personal Communications Services

Dear Commissioner Ness:

I would like to express my appreciation for our meeting on Tuesday to discuss minorities and other Designated Entities participation in PCS.

It is my understanding based on several of those meetings that the FCC is now entertaining a proposal that in lieu of a Designated Entities set-aside it will create a separate frequency block for new entities with a maximum gross revenues of \$100,000,000.00. As we previously discussed, it is evident that the cost of acquiring these frequencies through the auction process, as well, as the cost of construction and operation will be immense. Thus, limiting the participation in the new entrant spectrum block to companies with only \$100,000,000.00 in revenue will likely lead to the self fulfilling prophecy that these entities will not be able to participate in acquiring and constructing these facilities. Further, these Designated Entities may not have the financial strength to maintain true ownership and independent control in potential joint ventures.

Under this limitation, MasTec, Inc., (formerly Burnup & Sims and Church & Tower) which is owned and controlled by Jorge Mas Canosa and his family, would not be eligible to participate in this block. MasTec, Inc. has annual revenues of \$178,126,000.00, according to the Burnup & Sims Notice of 1993 Annual and Special Meeting and Proxy Statement issued on


Commissioner Susan Ness  
June 2, 1994  
Page Two

February 10, 1994. It is significant to note that notwithstanding this revenue, MasTec, Inc. had only \$525,000.00 in net income for the same period. Thus, MasTec, Inc., one of the few minority controlled companies with the financial wherewithal to participate in PCS would be excluded from participation in this new block.

Accordingly, we would respectfully request that in the event the FCC entertains this proposal for a new competitive block, that the \$100,000,000.00 threshold be raised to \$200,000,000.00 to allow minority companies such as MasTec, Inc. to participate.

With respect to our discussion concerning staggered auctions to allow for calculation of an adequate bidding credit, I still remain skeptical. The amount of time for the FCC to calculate the fair market value, as compared to the auction price, and then calculate a sufficient bidding credit will be significant. Then adequate time must be given for Designated Entities to negotiate and "paper" joint ventures. The result will be a significant headstart for the licensees of the first and second blocks, which I believe could be fatal for the ultimate successful Designated Entity. Further, Wall Street may not be willing to find the last entry into the market.

Sincerely yours,



Matthew L. Leibowitz

MLL/mdr

Enclosure

cc: Gregory Vogt, Esquire



# ***Burnup & Sims Notice of 1993 Annual and Special Meeting and Proxy Statement***



**Burnup & Sims / CT Group**  
**Pro Forma Financial Statements**  
**Unaudited Condensed Consolidated Statement of Operations**  
**Twelve Months**  
(In Thousands except per share data)

	<u>CT Group</u>	<u>Burnup &amp; Sims</u>	<u>Pro Forma Adjustments</u>	<u>Combined Pro Forma</u>
Revenues	\$ <u>34,136</u>	\$ <u>143,990</u>	\$ _____	\$ <u>178,126</u>
Costs and Expenses				
Costs of Revenues	22,163	126,233		148,396
General and Administrative	2,937	17,075		20,012
Depreciation and Amortization	371	6,600	(207) (14)	6,764
Interest Expense	35	4,718	240 (15)	4,993
Other - Net	<u>350</u>	<u>(5,906)</u>	<u>2,681</u> (16)	<u>(2,875)</u>
Total Costs and Expenses	<u>25,856</u>	<u>148,720</u>	<u>2,714</u>	<u>177,290</u>
Income (Loss) Before Income Taxes	8,280	(4,730)	(2,714)	836
Provision (Credit) for Income Taxes	<u>3,229</u> (17)	<u>(1,738)</u>	<u>(1,180)</u> (18)	<u>311</u>
Net Income (Loss)	\$ <u>5,051</u>	\$ <u>(2,992)</u>	\$ <u>(1,534)</u>	\$ <u>525</u>
Earnings (Loss) per Share	\$ <u>4.592</u>	\$ <u>(0.34)</u>		\$ <u>0.03</u>
Average Shares Outstanding (000's)	<u>1</u>	<u>8,768</u>	<u>7,095</u> (19)	<u>15,864</u>

See Notes to Pro Forma Financial Statements.